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Ex parte Milligan, supra. Other courts have sanctioned such military sentences. *State* v. *Brown*, 71 W. Va. 519, 77 S. E. 243; *U. S. ex rel McMaster* v. *Wolters*, 268 Fed. 69 (S. D. Tex.). The issue has been distinguishable in these cases, however, in that the writ was sought while martial law was still effective. The principal case is the first to clearly question the constitutionality of continued imprisonment after the restoration of civil order. But see *Ex parte Ortiz*, 100 Fed. 955 (Circ. Ct., D. Minn.). Since it is public danger which warrants the substitution of executive process for judicial process, there is no reason why a jury trial should not be granted when the emergency is relieved. See *Moyer* v. *Peabody, supra*, 85. The power to try is not essential to martial rule as long as the power to detain is unhampered. The decision in the instant case is therefore unnecessary and unfortunate.

EQUITABLE SERVITUDES — CHATTELS. — The plaintiff sold cigarettes to a purchaser subject to a restrictive agreement that they were not to be sold within the United States but were for export only. The purchaser resold them to the defendant who had notice of the restriction. The defendant advertised them for sale in the United States. The plaintiff moved for a preliminary injunction restraining the defendant from importing the cigarettes which had been shipped abroad, and selling them in the United States. *Held*, that the injunction be granted. *P. Lorillard Co.* v. *Weingarden*, 280 Fed. 238 (W. D. N. Y.).

Courts have not been inclined to enforce restrictive covenants on chattels once they have left the hands of the purchaser who agreed to the restriction. *Garst* v. *Hall & Lyon Co.*, 179 Mass. 588, 61 N. E. 219; *Apollinaris Co.* v. *Scherer*, 27 Fed. 18 (Circ. Ct., S. D. N. Y.); *McGruther* v. *Pitcher*, [1904] 2 Ch. 306; *Taddy & Co.* v. *Sterious & Co.*, [1904] 1 Ch. 354. See *Park & Sons Co.* v. *Hartman*, 153 Fed. 24, 39 (6th Circ.). One reason offered is that to do so will prevent the purchaser from enjoying the full benefits that usually accompany the ownership of chattels. While this is true, it is warranted because designed to protect the seller in his business. The second objection is that such covenants are unduly in restraint of trade and tend toward monopoly. If this be so, the court in each case can keep the agreements within their proper sphere by refusing to enforce those which are as a fact unduly in restraint of trade. *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373. But where the only effect of the agreement is to keep a particular lot of stale cigarettes off a market in which fresh lots of the same brand are being offered for sale without any restrictions this objection cannot be urged. See 3 WILLISTON, CONTRACTS, §§ 1636, 1639. If, then, the agreement is valid at law, there is no reason why equity should refuse relief when a case of irreparable injury, the loss of good will, is made out. A business may be the dominant tenement of an equitable servitude. *Palumbo* v. *Piccioni*, 89 N. J. Eq. 40, 103 Atl. 815; *Francisco* v. *Smith*, 143 N. Y. 488, 38 N. E. 980. There is nothing in the nature of a chattel which prevents it from being the servient tenement. *Murphy* v. *Christian etc. Co.*, 38 App. Div. 426, 56 N. Y. Supp. 597; *Authors & Newspapers Ass'n* v. *O'Gorman Co.*, 147 Fed. 616 (Circ. Ct., D. R. I.).

EVIDENCE — JUDGMENTS — ADMISSIBILITY IN SUIT BETWEEN DEFENDANT IN PRIOR SUIT AND STRANGER. — The plaintiff assigned a second mortgage to the defendant bank as security for a loan and having paid the loan sued for the wrongful discharge of the mortgage. The defendant to negative the damage to the plaintiff offered in evidence a decree obtained by a creditor of the mortgagor against the present plaintiff declaring

the mortgage void as in defraud of creditors. The evidence was rejected and the defendant excepted. *Held*, that the exception be sustained. *Hannaford* v. *Charles River Trust Co.*, 134 N. E. 795 (Mass.).

It has long been decided that a judgment cannot be used as evidence against a stranger to the action in which the judgment was rendered. *The Duchess of Kingston's Case*, 20 How. St. Tr. 355, 537n. From this it was loosely stated that a judgment is admissible to prove the facts on which it is based only in a suit between the parties to the original action. This rule was then applied to exclude a judgment even when offered against a party to the action in which it was rendered although he had every opportunity to litigate the facts which the judgment is offered to prove. *Lillie* v. *Woodmen of Am.*, 89 Neb. 1, 130 N. W. 1004; *Stone* v. *State*, 138 N. Y. 124, 128, 33 N. E. 733, 734. See *Comm.* v. *Cheney*, 141 Mass. 102, 106, 6 N. E. 724, 727. Courts endeavor to justify this result by arguing that the rule is unjust unless its operation is mutual. *Winston* v. *Starke*, 12 Gratt. (Va.) 317, 319. See 2 BLACK, JUDGMENTS, 2 ed. § 608. The reasoning is questionable and there is need of liberalization. See 2 TAYLOR, EVIDENCE, 11 ed., 1144; 5 WIGMORE, EVIDENCE, 2 ed. § 1347. Some courts have taken this step. *Estate of Crippen* [1911] P. 108; *Mash* v. *Darley*, [1914] 1 K. B. 1. See *Vulcan etc. Co.* v. *Assmant*, 185 App. Div. 399, 402, 173 N. Y. Supp. 334, 336. Unfortunately the court in the principal case can hardly be said to go along with these courts. The decree was offered not to prove the fraud upon which it was based but to prove the fact of its own existence and the legal consequences thereof, *i.e.*, that the mortgage was unenforceable in the plaintiff's hands and hence of no value to him. For such purpose a judgment is always admissible. *Barkaloo's Adm'r.* v. *Emerick* 18 Ohio 268. See *Spencer* v. *Dearth*, 43 Vt. 98, 105. See 2 BLACK, *op. cit.* § 604.

INITIATIVE AND REFERENDUM — POWERS OF THE LEGISLATURE — LEGISLATING ON SUBJECT MATTER OF REFERRED MEASURE. — The relator seeks a *mandamus* to compel the secretary of state to file his declaration of candidacy for a judgeship in a certain circuit. An act of the legislature abolishing this circuit had been suspended by a petition for reference to the voters. Before its submission, the legislature in special session passed a new bill purporting to repeal it, but reënacting most of its provisions. The Missouri Constitution provides: "Any measure referred to the people shall take effect and become the law when it is approved by a majority of votes cast thereon, and not otherwise. . . This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure." (MO. CONST. Art. 4, § 57.) *Held*, that a *mandamus* should issue. *State ex rel. Drain* v. *Becker*, 240 S. W. 229 (Mo.).

Since the legislature cannot deprive the people of the right to vote on a submitted act, the second act must be invalid in so far as it purports to repeal the referred measure. See MO. CONST., Art. 4, § 57. The principal case goes beyond this and deprives the legislature of the power to legislate on the subject matter of the measure suspended. Only clear wording of a state constitution warrants such a restriction. See James B. Thayer, "American Doctrine of Constitutional Law," 7 HARV. L. REV. 129. It is not warranted by the Missouri Constitution. See MO. CONST., Art. 4, § 57. It is not required to protect the people's rights, for the new act may also be suspended, or by approving or rejecting the old the people may control the new by the ordinary operation of subsequent legislation. The contention that to uphold the legislature here would promote friction with the people loses force under the almost universal rule that the legislature may repeal at once any act of the people. See